

NO. 34678-1-III
COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMIE S. ANDREWS,

Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant has raised two issues in this appeal. Those assignments of error can be summarized as follows;

1. Did the court err in finding it was reasonable conduct for a police officer to direct his off-duty ride along to participate in a criminal investigation when it was against Sunnyside police department protocol and the officer misrepresented the fact of participation in search warrant affidavits?
2. Was the officer's conduct sufficiently outrageous to warrant dismissal under CrR 8.3(b)?
3. Did the trial court err when it denied a motion to suppress, or in the alternative, a motion to dismiss?
4. Should this Court deny imposition of appellate costs in the event Mr. Andrews does not substantially prevail on appeal and the State files a cost bill?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The trial court did not err when it determined that the actions of the two state commissioned police offices was reasonable given the facts and circumstances.
2. The officer's actions were not "outrageous" therefore Appellant has not met his burden pursuant to the case law regarding CrR 8.3(b)
3. The trial was correct when it denied the motions to suppress and/or dismiss.
4. The State, by and through Yakima County will not request cost when it prevails on appeal.

II. STATEMENT OF THE CASE

On April 19, 2016 Officer Sparks was employed by the Sunnyside Police Department and was patrolling in that jurisdiction. RP 5¹ While patrolling this officer observed Appellant's vehicle and "ran" the license plate. The information returned from that check was that the owner of the vehicle had a suspended driver's license. RP 6, RP1 61-4.

Just after the officer turned on his overhead lights he observed a glass object thrown from Andrews' car. Both officers knew it to be a pipe used to smoke methamphetamines. RP1 63-4, 68-70, 142-4. Andrews was searched incident to arrest by Officer Sparks who took possession of a small plastic baggie with suspected methamphetamine and the broken glass pipe that contained residue of smoked methamphetamine. RP 6

These two items were "field tested" by Trooper Jerrica Sparks who was at the time of Andrews arrest a fully commissioned Trooper with the Washington State Patrol. Trooper Sparks was in the police car on the date of this offense as a "ride-along" passenger. RP 6-9, 13-14, 25, 28-29, RP1 69-70. She was directed by Officer Sparks to collect the glass, pipe that was thrown out the car window by Andrews prior to the actual stop of his vehicle. RP 16-17,18, RP1 64, 68-70, 73. Officer Sparks and Trooper

¹ There are two sets of RP in this case one contains the hearing regarding Andrews' various motions. The second is the trial and sentencing this contains volumes 1-4 which are paginated consecutively. The State shall refer to the hearings RP as "RP" and the trial RP a RP1.

Sparks are husband and wife. RP1 69, 72, 142.

Officer Sparks testified that he had Trooper Sparks seize the broken glass pipe from the middle of the road because he did not have backup at the scene, she was a fully commissioned police officer and, it was an emergent situation. RP1 82-4.

Trooper Sparks testified that she had been trained by the Washington State Patrol. She had attended the full Washington State Patrol Academy. RP1 143. Trooper Sparks testified that she used standard protocol when she was seizing the items and when she was doing the field testing of the two items. RP1 145-6. The Trooper testified that she did nothing to compromise these two items of evidence, she did not alter or taint or plant this evidence. RP1 145-6. Trooper Sparks turned the two items over to Officer Sparks who placed them into an evidence locker. RP1 146

Trooper Sparks eventually did the “field-testing” of these two items using what is referred to as a “NIC” kit. RP 23, 29, 32, RP1 144-48. These two items were eventually sent to the Washington State Crime Laboratory for analysis by forensic scientist Jason Trigg. Both were found to have methamphetamine present in or on them. RP 10-11, RP1 117-130.

Trooper Sparks testified that she had resigned her commission with

the State Patrol, that it was a voluntary resignation due to other employment. She further stated that she had had a letter issued from the State Patrol notifying her that there would be an investigation initiated due to the stating to her sergeant that she had issued an infraction to a citizen with whom she had had contact when in fact she had not issued that citation. Trooper Sparks was questioned very extensively by Andrews' trial counsel as well as the State regarding this letter and her resignation.

RP1 148-169

Andrews did not renew any of his motions and specifically did not renew his motion for dismissal at the conclusion of the State's case, there was no "half-time" motion, Andrews merely rested his case at the conclusion of the State's case.

The parties submitted finding of fact and conclusions of law that addressed Andrews motions to dismiss or suppress. CP 92-95.

III. ARGUMENT.

Challenged findings.

Andrews has not challenged any of the findings of fact, he does challenge the conclusions of law. Therefore, this court will treat unchallenged findings of facts as verities for this appeal. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). See also, State v. Handburgh, 61 Wn. App. 763, 812 P.2d 131 (1991), rev'd on other

grounds, 119 Wn.2d 284, P.2d 641 (1992). Even when a party challenges the findings of fact that were entered this court's scope of review would still be limited in scope. This court would determine whether substantial evidence supports the challenged findings of fact and, if so, whether the findings support the conclusions of law. Stevenson, 128 Wn. App. at 193.

This court's review of challenged conclusions of law is de novo. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008). State v. Mendez, 137 Wn.2d 208, 970 P.2d 722 (1999) "We review findings of fact on a motion to suppress under the substantial evidence standard. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. We review conclusions of law in an order pertaining to suppression of evidence de novo." (Citations omitted.)"

The findings and conclusions entered in this case are set forth in Appendix B. Two of those findings are very important to this review:

16. When the correct lab report was provided to the State and then disclosed on July 22, 2016, the trial date was reset within the already-existing speedy trial timeframe.

17. The defendant was not forced to waive any additional rights as a result of the delayed receipt and subsequent disclosure of the lab report, or to make a choice between waiving speedy trial and proceeding to trial

with unprepared defense counsel.

Andrews specifically challenges conclusions of law 6,7,8,9.

6. Under the circumstances, due to public safety and officer safety concerns, it was reasonable for Officer Sparks to have Mrs. Sparks retrieve the glass pipe.
7. It was not misconduct for Mrs. Sparks to later field test the evidence in the presence of Officer Sparks and Officer Nathan Porter of the Sunnyside PD.
8. The insertion of Mrs. Sparks into peripheral aspects of the criminal investigation had no material impact on the chain of custody, as there were no facts suggesting and no arguments made that she tainted the evidence in any fashion.
9. The defendant's motions to dismiss and/or suppress are denied.

Conclusion 6 is supported by uncontroverted, uncontested facts and testimony. The officers both testified that this broken glass pipe was laying in the roadway. The danger was not only to the cars that were passing by but also clearly the destruction of this evidence. The actions of Trooper Sparks, a fully commissioned officer, were proper. The facts support this conclusion. The State would add that in an instance such as this it also would not have been unreasonable for Officer Sparks to call for the assistance of a lay person to retrieve this pipe from the road. The cases cited below regarding chain of custody do not mention the occupation of the person(s) in the chain or how they came to lay hands on the item in question.

Conclusion 7 is supported by the uncontested facts. While there may have been some violation of an internal policy for the Sunnyside Police Department to have an off duty officer assist in this type of activity, once again, the unrefuted facts are that Trooper Sparks testified that she conducted these inadmissible preliminary examination of the controlled substance in a manner and means that comported with her training as a fully commissioner Trooper with the Washington State Patrol.

Conclusion 8 is supported by the uncontested facts. Both officers testified as to the actions of Trooper Sparks. As argued below the chain of custody in this case was not broken and Andrews was able to extensively examine both officers regarding this allegation. The court sitting on this case signed these findings after the trial and therefore had as a factual basis both the testimony of the officers in the hearing and the trial.

Conclusion 9 is a summary conclusion and it is supported by the uncontested facts and the other conclusions of law. The trial court fully and fairly considered the testimony in this case and made this discretionary ruling, a ruling which Andrews has not and cannot present evidence was not a well-reasoned ruling by the trial court.

A trial court's denial of a suppression motion, shall be reviewed by this court. Initially this court would review challenged findings of fact for

substantial evidence, there is no challenge therefore there are verities, then this court would review challenged conclusions of law de novo, and determine whether the findings support the conclusions. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Substantial evidence is "a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). "Unchallenged findings of fact entered following a suppression hearing are verities on appeal." State v. Gaines, 154 Wn.2d 711, State v. Gardee 716, 116 P.3d 993 (2005). Further, "conclusions entered ... following a suppression hearing carry great significance for a reviewing court." State v. Collins, 121 Wn.2d 168, 174, 847 P.2d 919 (1993). It is well grounded law that this court may affirm a trial court's denial of a suppression motion "on any ground supported by the record, even if the trial court made an erroneous legal conclusion." State v. Avery, 103 Wn. App. 527, 537, 13 P.3d 226 (2000).

Response to allegations – The involvement and participation by Trooper Sparks, a fully commissioned officer, in the investigation of Andrews's criminal actions was not misconduct and did not require dismissal of the underlying charges or suppression of the seized evidence.

Andrews argues the actions of Trooper Sparks, a fully commissioned police officer who retrieved evidence and conduct a preliminary, non-admissible "field test" was so outrageous that this entire

case should be dismissed. The actions of these two officers while perhaps violating the “policy” of the Sunnyside Police Department do not meet the test set forth in State v. Lively, 130 Wn.2d 1, 19, 921 P.2d 1035 (1996).

Lively is often cited when this type of allegation is raised by an appellant. “[O]utrageous conduct is founded on the principle that the conduct of law enforcement officers and informants may be 'so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.'" Lively, 130 Wn.2d at 19 (quoting United States v. Russell, 411 U.S. 423, 431-32, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973)). CrR 8.3(b) provides:

The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's rights to a fair trial.

In order to succeed on a CrR 8.3(b) motion to dismiss, the Andrews would have had to show by a preponderance of the evidence "(1) 'arbitrary action or governmental misconduct' and (2) 'prejudice affecting the defendant's right to a fair trial.'" State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting State v. Michielli, 132 Wn.2d 229, 239-40, 937 P.2d 587 (1997)). "Although mismanagement is sufficient to establish governmental misconduct, dismissal under CrR 8.3(b) is an extraordinary

remedy used only in truly egregious cases." State v. Flinn, 119 Wn.App. 232, 247, 80 P.3d 171 (2003).

This court will review a trial court's decision to dismiss charges under the abuse of discretion standard. Michielli, 132 Wn.2d at 240. A trial court abuses its discretion when its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. Michielli, 132 Wn.2d at 240. State v. Downing, 151 Wn.2d 265, 272-3 (2004); "We will not disturb the trial court's decision unless the appellant or petitioner makes "a clear showing . . . [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (citing MacKay v. MacKay, 55 Wn.2d 344, 347 P.2d 1062 (1959))."

In the trial court Andrews consistently argued that the officers violated "policy" but never stated that their actions violated due process nor did he ever argue that the conduct of Officer Sparks and Trooper Sparks was "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." Id. Andrews mentions CrR 8.3 in the trial court but there is not one instance where he refers to the proper standard or that the actions of the two officer met that standard. See Appendix A.

For police conduct to violate due process, "the conduct must be so shocking that it violates fundamental fairness." Lively, 130 Wn.2d at 19. Lively set forth examples of outrageous conduct which include "those cases where the government conduct is so integrally involved in the offense that the government agents direct the crime from beginning to end, or where the crime is fabricated by the police to obtain a defendant's conviction, rather than to protect the public from criminal behavior." Lively, 130 Wn.2d at 21.

Once again there was never a claim by Andrews that the actions of these two officer was outrageous. Andrews consistently argues in the motion hearing that the actions of the officer was "... against Sunnyside Police Department policy to allow a ride-along passenger to actively participate in the processing of a criminal investigation...Is it against Sunnyside Police Department policy to allow a ride-along to conduct chemical testing on evidence during a criminal investigation." RP 14-15. Andrews argument is the same regarding the alleged prejudice from the delay in having the methamphetamine analyzed. RP 11.

A claim based on outrageous conduct requires "more than a mere demonstration of flagrant police conduct." Lively, 130 Wn.2d at 20. "Public policy allows for some deceitful conduct and violation of criminal laws by the police in order to detect and eliminate criminal activity."

Lively, 130 Wn.2d at 20. "**Dismissal based on outrageous conduct is reserved for only the most egregious circumstances.**" Lively, 130 Wn.2d at 20. (Emphasis added.)

In reviewing a defense of outrageous government conduct, this court is tasked with evaluating the conduct based on the totality of the circumstances. Lively, 130 Wn.2d at 21. There are several factors to consider when determining whether police conduct offends due process:

(1) "whether the police conduct instigated a crime or merely infiltrated ongoing criminal activity, " (2) "whether the defendant's reluctance to commit a crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation, " (3) "whether the government controls the criminal activity or simply allows for the criminal activity to occur, " (4) whether the police motive was to prevent crime or protect the public, " (5) "whether the government conduct itself amounted to criminal activity or conduct 'repugnant to a sense of justice.'" Lively, 130 Wn.2d at 22.

Whether the State has engaged in outrageous conduct is a matter of law, not a question for the jury. Lively. 130 Wn.2d at 19. In Lively, our Supreme Court concluded that the State's actions constituted outrageous conduct in violation of the defendant's due process rights. *Id.*, at 130 Wn.2d at 1. In Lively a state agent became emotionally involved with Lively and then took advantage of her personal issues to get Lively to sell this informant drugs. The Supreme Court determined that the State's

conduct warranted dismissal of the charges.

Here even Andrews own statement in his brief clearly sets forth that the actions of these two officers does not meet the test set forth in Lively: “The conduct in this case is far different from that in Lively. Here, the objectionable conduct was not an attempt to ferret out crime that often takes place in secret. Rather, it is the behavior of the law enforcement officer that was directly contrary to department policy. It was outrageous for Officer Sparks to direct his wife to perform his duties. And, at the very least, it was disingenuous for him to hide the facts from the magistrate who reviewed the search warrant affidavits. Mr. Andrews remained in jail based on the results of the NIK test.” Andrews also states that there was never anything presented to the trial court from the two search warrants that were alleged to have false information contained in the. (Appellant’s brief is not paginated however this quote appears at the bottom of page 15 and continues onto page 16.)

This court should note that in Andrews argument he states that it was “outrageous” for that Officer Sparks, to “direct his wife” to act. Not that Officer Sparks directed Trooper Sparks, a fully commissioned police officer to assist him. While the actions of these two officers might have violated the policy manual of Sunnyside Police Department their actions in no manner or means were outrageous.

The testimony from Trooper Sparks was, once again, that she comported her actions with her background, training and knowledge. The continuous accusations that these two officers tainted or planted this methamphetamine and apparently a methamphetamine pipe is specious and completely unfounded.

Washington courts have rejected the outrageous conduct defense even in cases where police engage in illegal activities. State v. Markwart, 182 Wn.App. 335, 349-50, 329 P.3d 108(2014). Once again the facts before the trial court and now this court do not merit further review.

Chain of custody is mentioned throughout this trial court action and in this appeal. Andrews states that the court had to “assume” that the evidence was properly handled, despite the very real cloud over these the credibility of the two witnesses.” And yet Andrews cites to not one single case regarding chain of custody. State v. Dennison, 115 Wn.2d 609, 629, 801 P.2d 193 (1990) “Finally, Dennison claims, for the first time, cumulative error. He neither briefs the issue nor cites to authority. The issue will not be reviewed. See Smith v. King, 106 Wn.2d 443, 722 P.2d 796 (1986). Cases on appeal are decided only on evidence in the record. State v. Wilson, 75 Wn.2d 329, 332, 450 P.2d 971 (1969). See also, State v. Hunter, 3 Wn. App. 552, 553, 475 P.2d 892 (1970) “Appellants fail to mention this assignment at any point in their brief after they listed it as an

assignment of error. Because of this failure to make any argument in support of this assignment and because it is not meritorious on its face, we do not consider this assignment. State v. Frye, 53 Wn.2d 632, 335 P.2d 594 (1959); State v. Williams, 49 Wn.2d 354, 301 P.2d 769 (1956).”

This court does not review errors alleged but not argued, briefed, or supported with citation to authority. RAP 10.3. At this court stated in State v. C.B., 195 Wn.App. 528, 380 P.3d 626 (2016) “We will not review issues for which inadequate argument is briefed or only passing treatment is given. State v. Thomas, 150 Wash.2d 821, 868-69, 83 P.3d 970 (2004), *aff’d*, 166 Wash.2d 380, 208 P.3d 1107 (2009).” RAP 10.3(a)(6) directs each party to supply, in his brief, "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." This court will not consider conclusory arguments that are unsupported by citation to authority. Joy v. Department of Labor & Industries, 170 Wn. App. 614, 629, 285 P.3d 187 (2012). Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. West v. Thurston County, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012).

This court should decline to address this assignment of error.

In the alternative, even if this court considers this issue there is nothing in the record in the trial court that would indicate the evidence had

been tainted, altered, or planted. Andrews did not testify. The officers were extensively examined by Andrews' trial attorney. The result of that was that the court entered the conclusion that Andrews now challenges.

State v. McGinley, 18 Wn. App. 862, 866-7, 573 P.2d 30 (1970)

“The testimony of each custodian is unnecessary where one with firsthand knowledge testifies that the exhibit is the identical object about which testimony is given, and it is in the same condition as it was at the relevant time. State v. Curry, 14 Wn. App. 775, 545 P.2d 1214 (1976); 5 R.

Meisenholder, Wash. Prac. 38, at 77 (1965). It is not necessary to negate every possibility of tampering with the exhibits by using identifying marks or tracing custody by means of the testimony of each custodian. State v. Russel, 70 Wn.2d 552, 424 P.2d 639 (1967). Failure to positively identify physical evidence goes only to its weight and not to its admissibility. State v. Music, 79 Wn.2d 699, 489 P.2d 159 (1971), vacated on other grounds, 408 U.S. 940, 33 L. Ed. 2d 764, 92 S. Ct. 2877 (1972); State v. Tollett, 12 Wn. App. 134, 528 P.2d 497 (1974).” State v. Early, 36 Wn. App. 215, 222, 674 P.2d 179, “The chain of custody was sufficiently shown, even with two lapses in the sheriff's evidence form; the tape was identified as the same object and in the same condition when admitted into evidence as it was when taken into possession.”

Response to assignment of error – Appellate costs.

The State has not indicated ad nauseam that State v. Sinclair, 192 Wn.App. 380, 385-86, 388-90, 367 P.3d 612 (quoting RAP 14.2), review denied 185 Wn.2d 1034 (2016) allows for the awarding of costs to the primary prevailing party on appeal. “The commissioner or clerk “will' award costs to the State if the State is the substantially prevailing party on review, 'unless the appellate court directs otherwise in its decision terminating review. "... When a party raises the issue in its brief, we will exercise our discretion to decide if costs are appropriate.... We base our decision on factors the parties set forth in their briefs rather than remanding to the trial court.”

The State, by and through the Yakima County Prosecutors Office continues to assert the right to request these costs. However, as Yakima County has indicated in each and every appeal that this has been raise in, in the interests of justice and judicial economy the State shall not be requesting appellate costs in this case when it prevails.

IV. CONCLUSION

Andrews has shown nothing to support the requirement of the case law that the challenged actions of the officers was outrageous. In fact, the given the time place and nature of the ride-a-long's employment at the time of this event, the actions of these two officers was understandable.

They were subject to very rigorous examination by both side of this case. This examination was allowed to go so far as to address allegations of misconduct and misstatements made by both officers and yet these allegations found no traction with the trial court judge not the jury.

The conclusions entered by the trail court are supported by the evidence. The chain of custody regarding the two items of evidence that were found to contain controlled substance was solid, the trial court was correct when it issued its ruling denying the motion to dismiss and/or suppress.

For the reasons set forth above this court should deny allegation and affirm the actions of the trial court.

Respectfully submitted this day of August 2017,

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APPENDIX A

THE COURT: In your opinion is there – is the standard for the misconduct the same or different under (a) or (d)?

MR. WEBSTER: Your Honor, I believe it would be the same. I mean, I think it's still arbitrary action by – by a government agent. You know, I think that clearly – the type of delay that was here, you know, sitting on evidence until time of trial, I think under 4.7(d) I think it – it meets the same requirement, for an 8.3(b). (RP 38)

...

MR. WEBSTER: I guess, Judge, is – the fact that it – it had been so long and we were coming up against trial, we were at a point where we needed to get it set for trial. My client – did not want to go out any farther, he wanted his day in court, he wanted his trial. I was trying to make that happen. And so we were at a point where we had an omnibus hearing, we – we had to get things set, we had to get it set for trial.

But the fact of the intentional delay, I thought that changed the circumstances. And I thought that's what turned it into an 8.3(b)--

THE COURT: Uh-huh.

MR. WEBSTER: --was really finding out that it had not even – been processed. (RP 44)

...

THE COURT: Uh-huh. Okay. And you'd had some additional argument.

MR. WEBSTER: Well, your Honor, so, regarding – there does have to be a showing of prejudice, with an 8.3(b), regarding the discovery violation. You know, I think this is a – a (inaudible) argument for defense. I think there's clearly arbitrary conduct on behalf of the state. I think the – also, the 4.7 discovery violation is treated as arbitrary action, government misconduct. (RP 45)

...

MR. WEBSTER: You know? So trial – that was three, four days away at that point.

THE COURT: And that got moved out to August--

MR. WEBSTER: Right.

THE COURT: --22nd

MR. WEBSTER: Yes. And – then so we'd have to focus, change our focus on, you know, 8.3(b) motion--

THE COURT: Uh-huh.

MR. WEBSTER: That's taken up, you know, quite a bit of time. We have continued to conduct interviews and so forth, and prepare, but, you know, it leaves us with a – a short window of time, now – to get this case tried.

THE COURT: On the prejudice standpoint, that – case – the Salgado-Mendoza case – and you quoted from it – the prejudice puts the defendant in a situation where they have to waive their speedy trial right, or go to trial not fully prepared.

The question I had was, here, as of the – date of the prior hearing on the 22nd, the speedy trial had been – I think in your brief you had put it out to August 24th--

MR. WEBSTER: I believe--

THE COURT: So if the trial – if the trial gets set to August 22nd, has your client been asked to waive his speedy trial right.

MR. WEBSTER: Can you repeat that, Judge?

THE COURT: Sure. In the Salgado-Mendoza case – and your argument in your brief is that your client had been asked – put in the unenviable position of having to waive their speedy trial right or go to trial unprepared, and that put him in an unfair position. But in – in this case, on the 22nd of July 23 your brief points out that – his speedy trial right had already been extended to August 24th. So by moving the 25 trial from July 25th to August 22nd, has your client had to waive his speedy trial right. (RP 49-51)

...

MR. WEBSTER: Yes, Judge. It's – it's the latter. I think – the idea – Mr. Andrews – Well, although he's charged with a crime, he's a – he's a citizen of this community, he's got constitutional rights, he's – he's protected by the laws of the state.

And there's – there's a level of professional conduct. I think, to allow an off-duty officer, who's your spouse, and is in a position that it not sanctioned – One, she's not on – on patrol for state patrol, this is not sanctioned conduct from what I can take from testimony by the

Sunnyside Police Department. Instead you have- you have A husband and wife officer combination that – where the husband’s allowing the wife to – to engage in – the criminal investigation. It’s not sanctioned activity, to the best of my knowledge, by the police department that is allowing this ride-along.

I think it – it – it does taint the general evidence.

It taints the criminal investigation. There’s got to be a level of professional conduct, you know, standard operating procedure. And--

THE COURT: Is the remedy suppression or dismissal, or is it more akin to what Barry Scheck did in the O.J. Simpson trial when he went after Dr. Fong and – destroyed what we perceived to be destroyed his credibility on the stand as to the tainted DNA evidence? I’m trying to understand--

MR. WEBSTER: Well, your Honor, --

THE COURT: --the remedy that would flow from this.

MR. WEBSTER: I certainly think that’s one way to address it is through credibility. But I think under 8.3(b), I think this allows the court to take control – and either dismiss or suppress the evidence based on this level of misconduct.

I think – it does prejudice Mr. Andrews, that – this is – a person in regular clothes – And it should be pointed out, it appears to be with the intent to engage in the activity. So it’s a – it’s a ride-along but it appears – It’s not responding to some emergency--

THE COURT: Uh-huh.

MR. WEBSTER: It’s – it’s actively engaging in official police work with who she’s not employed by. (RP 49-51) (Emphasis added.)

APPENDIX B

'16 AUG 31 P1:44

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

STATE OF WASHINGTON,)	No. 16-1-00760-39
)	
Plaintiff,)	
)	
v.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW RE:
JAIME STEWART ANDREWS,)	CrR 3.6/8.3(b) HEARING
DOB: 11/28/79,)	
)	
Defendant.)	

This matter having been heard and argued in open court on August 12, 2016, the court now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. Facts of the Case

1. On April 19, 2016, Officer Christopher Sparks was on-duty for the Sunnyside PD.
2. He was operating with his wife, then-Trooper Jerrica Sparks, on a ride-along. At the time, Mrs. Sparks was a commissioned law enforcement officer with the State Patrol.
3. He stopped the defendant within city limits for a traffic-related offense.
4. Prior to stopping but after Officer Sparks had activated his lights, the defendant threw an object from his car window which was observed to be a glass methamphetamine pipe.



5. The defendant was placed under arrest. Search incident to arrest, Officer Sparks found a small plastic baggie that contained suspected methamphetamine.
6. Post-arrest but pre-Miranda, the defendant admitted in response to questioning that he had smoked methamphetamine recently.
7. Mrs. Sparks retrieved the glass pipe from the roadway, and eventually field-tested the methamphetamine in Officer Sparks' presence.
8. The Washington State Patrol Crime Lab confirmed the drugs were methamphetamine.
9. No allegations were made that Mrs. Sparks in any way tainted the evidence.

II. Procedural Posture

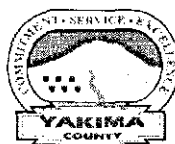
10. The defendant was arraigned on May 5, 2016.
11. The State was not in possession of the State Patrol crime lab report until July 21, 2016.
12. In the intervening time, multiple requests were made by the defense to the State, and then by the State to Sunnyside PD, to obtain testing results on the drugs seized.
13. On June 13, 2016, the defendant signed an agreed continuance order to provide time for defense counsel to accomplish witness interviews and obtain further discovery. This set his trial date for July 25, 2016, with a speedy trial expiration of August 24, 2016.
14. At the time the omnibus order was entered on July 11, 2016, both parties knew that the lab report was still outstanding and would be coming in at any time prior to trial.
15. On July 21, 2016, the State became aware that the lab results it had been provided were not the correct lab results, and immediately took steps to obtain the correct results.
16. When the correct lab report was provided to the State and then disclosed on July 22, 2016, the trial date was reset within the already-existing speedy trial timeframe.



1 17. The defendant was not forced to waive any additional rights as a result of the delayed
2 receipt and subsequent disclosure of the lab report, or to make a choice between waiving
3 speedy trial and proceeding to trial with unprepared defense counsel.

4 CONCLUSIONS OF LAW

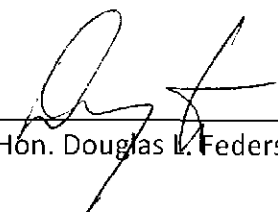
- 5 1. This court has jurisdiction over the subject matter and the defendant in the above-entitled
6 cause. This court is also the proper venue for hearing the matter.
- 7 2. Since the lab report at issue was never in the State's position prior to July 21, 2016, CrR
8 4.7(a) is inapplicable. Pursuant to the wording of CrR 4.7(a) and *State v. Salgado-*
9 *Mendoza*, 194 Wn. App. 234, 245, 373 P.3d 357 (2016), the applicable rule is CrR 4.7(d).
- 10 3. The deputy prosecutor assigned to this case, Chad W. McHenry, made reasonable efforts
11 in compliance with CrR 4.7(d) to respond to all defense discovery requests.
- 12 4. The deputy prosecutor ultimately fulfilled all of those requests, even if circumstances
13 conspired to delay receipt and disclosure of the lab report.
- 14 5. As a result of these efforts, there was no violation of RPC 3.4 by the deputy prosecutor.
- 15 6. Under the circumstances, due to public safety and officer safety concerns, it was
16 reasonable for Officer Sparks to have Mrs. Sparks retrieve the glass pipe.
- 17 7. It was not misconduct for Mrs. Sparks to later field test the evidence in the presence of
18 Officer Sparks and Officer Nathan Porter of the Sunnyside PD.
- 19 8. The insertion of Mrs. Sparks into peripheral aspects of the criminal investigation had no
20 material impact on the chain of custody, as there were no facts suggesting and no
21 arguments made that she tainted the evidence in any fashion.
- 22 9. The defendant's motions to dismiss and/or suppress are denied.




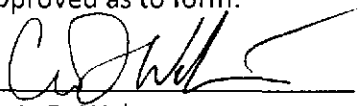
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IT IS SO ORDERED.

DATED this 31 day of August, 2016.

By: 
Hon. Douglas L. Federspiel

Presented by:

Chad W. McHenry
Deputy Prosecuting Attorney
WSBA #45228

Approved as to form:

Craig D. Webster
Attorney for Defendant
WSBA #40064



I, David B. Trefry state that on August 27, 2017, I emailed a copy,
by agreement of the parties, of the Respondent's Brief, to Marie J.
Trombley at marietrombley@comcast.net

I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 27th day of August, 2017 at Spokane, Washington.

s/ David B. Trefry
By: DAVID B. TREFRY WSBA# 16050
Deputy Prosecuting Attorney
P.O. Box 4846, Spokane, WA 99220
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YAKIMA COUNTY PROSECUTORS OFFICE

August 27, 2017 - 10:53 PM

Transmittal Information

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Superior Court Case Number: 16-1-00760-6

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